

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2004-120-T - ORDER NO. 2004-473

OCTOBER 6, 2004

IN RE:	Application of The Big Five, LLC d/b/a)	ORDER GRANTING
	Apartment Movers, Etc. 3926 Wesley Street,)	CLASS E CERTIFICATE
	Unit 802, Myrtle Beach, SC 29579 (District)	
	1) for a Class E (HHG) Certificate of Public)	
	Convenience and Necessity)	

This matter comes before the Public Service Commission of South Carolina (the “Commission”) on the Application of The Big Five, LLC d/b/a Apartment Movers, Etc. (“Big Five” or the “Applicant”), 3926 Wesley Street, Unit 802, Myrtle Beach, SC 29579. This Application was filed with the Commission by the Applicant requesting a Class E Certificate of Public Convenience and Necessity to transport household goods as follows:

Household Goods, As Defined in R. 103-210(1):

Between points and places in Horry and Georgetown Counties to points and places in South Carolina

The Commission’s Executive Director instructed the Applicant to publish a Notice of Filing in a newspaper of general circulation in the service area desired. The Notice of Filing was published and instructed the public as to how to file pleadings to participate in the proceedings on the Application. No Petitions to Intervene were received in this matter.

A hearing was held on September 16, 2004, at 2:30 PM in the offices of the Commission. The Honorable Randy Mitchell, Chairman, presided. John J. Pringle, Jr.,

Esquire, appeared representing the Applicant. The Commission Staff was represented by Jocelyn G. Boyd, Staff Counsel.

Robert Meyer, Hallie Tyler, and Kim Swanson appeared and testified on behalf of the Applicant. Mr. Meyer is the owner of Big Five. Mr. Meyer testified that he has extensive experience in the construction business in the Myrtle Beach area but has only recently entered into the moving business. Mr. Meyer stated that he felt that there was a need for an additional local moving company in the Myrtle Beach and Georgetown areas and would be operating the Big Five as a franchisee of Apartment Movers, Etc. Mr. Meyer testified that he was currently operating in the Myrtle Beach area under the statewide authority held by K & K Investments d/b/a Apartment Movers, Etc. (the “Franchisor”) and an equipment lease agreement. Mr. Meyer also provided evidence that Big Five had purchased vehicles, leased office space, and obtained equipment to begin operations.

As to the anticipated business operations of Big Five, Mr. Meyer testified that Big Five intended to specialize in local and short notice moves, a niche of the moving industry which he stated are lacking in the Myrtle Beach and Georgetown areas. He stated that he did not believe that Big Five would be buying or leasing any warehouse facilities in the foreseeable future. Mr. Meyer further stated that he anticipated using the expertise of the franchisor, Apartment Movers, Etc., to learn the finer points of the moving industry.

Ms. Kim Swanson is the owner of K & K Investments d/b/a Apartment Movers, Etc. and is the Franchisor. Ms. Swanson testified that K & K would no longer be serving

the Myrtle Beach and Georgetown areas and believed that her business records for that area establish the need for a moving company in the Grand Strand area which specializes in small and short notice moves. Ms. Swanson testified that K & K had typically performed 40 to 50 moves per month in the Myrtle Beach area and that by her discontinuing service in this area that there would clearly be the need for a new company. Ms. Swanson testified that she believed that the Apartment Movers franchises offered an alternative to those who would normally move themselves as Apartment Movers has no minimum size or distance requirements for moves as do many of the larger moving companies.

Ms. Hallie Tyler is employed by Big Five and testified that she had been recording requests for Big Five's services since April 19, 2004. Ms. Tyler further testified that she had been taking referrals for Big Five's services from other movers in the area, including Two Men and a Truck. Her testimony supported the Applicant's claim that there is a need for the services being offered by the Applicant in the Myrtle Beach area.

There were no intervenors in this matter and no testimony was offered in opposition to the Application.

Testifying on behalf of the Commission Staff was the Director of the Transportation Division, Mr. George Parker. Mr. Parker testified that he had visited the Applicant's place of business in Myrtle Beach and inspected the vehicles, which he described to be in excellent condition. Photographs taken by Mr. Parker of the location and vehicles were entered into the record of this case. Mr. Parker further testified that he

was not aware of the fact that the company had been attempting to operate under K & K's statewide authority and had therefore not seen, or asked for, any lease agreements during the course of his inspection. Mr. Parker further testified that such an agreement and operation was illegal under the Commission's regulations and statutes and that Big Five could not perform household moves until permitted to do so by the Commission.

At the close of the hearing, the Commission asked for certain exhibits to be filed by the Applicant prior to consideration of the Application by the Commission. The Commission specifically asked for copies of the companies' insurance policies, the lease agreement between K & K and Big Five, and a copy of the franchise agreement between Big Five and K & K. The last of these exhibits was received by the Commission during the week of September 27, 2004.

S.C. Code Ann. 58-23-590(C)(Supp. 2003) states that "the Commission shall issue a common carrier certificate...of public convenience and necessity if the applicant proves to the Commission that: (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of the chapter and the [C]ommission's regulations; and (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity." We would note that we have waived the "shipper witness" rule for establishing public convenience and necessity found in 26 S.C. Code Regs. 103-133 (Supp. 2003) for applicants seeking authority in three contiguous counties or less. In the present case, the Applicant has sought authority in a two county area to points and places throughout South Carolina. It has thus sought authority in an area greater than three counties. The Applicant presented

both Ms. Kim Swanson as shipper witness and further offered the testimony of Ms. Hallie Tyler to establish that the Applicant's services are required by public convenience and necessity.

We find that the witnesses presented on behalf of the Applicant do establish that the Applicant is fit, willing and able to provide the services for which it seeks a license from this Commission. We further find that the Applicant established that public convenience and necessity warrant the issuance of a permit to the Applicant to move household goods between points and places in Horry and Georgetown Counties to points and places in South Carolina.

The Commission does have concerns regarding the actions of K & K Investments in permitting the Applicant to operate under its statewide authority without notifying the Commission of the lease agreement entered by the parties or obtaining the authority of this Commission. A company holding statewide authority from this Commission cannot lease, sell or itself grant authority to a third party to operate under that authority. The lease agreement in this case was for equipment and cannot lease the lessor's authority. We do not, however, find that the unlicensed operation of Big Five was due to any error, act, or omission on the part of the Applicant. Based upon the record before the Commission and the statutory requirements along with the guidelines contained in the Commission's regulations, we therefore grant to Big Five a Class E Certificate of Public Convenience and Necessity for the movement of household goods as follows:

Household Goods, As Defined in R. 103-210(1):
Between points and places in Horry and Georgetown Counties to
points and places in South Carolina.

This grant of authority is contingent upon compliance with all Commission regulations as outlined below.

IT IS THEREFORE ORDERED:

1. That the Application of Big Five, LLC d/b/a Apartment Movers Etc. for a Class E Certificate of Public Convenience and Necessity be, and hereby is, approved for authority to transport household goods between points and places in Horry and Georgetown Counties to points and places in South Carolina.

2. Big Five shall file the proper license fees and other information required by S.C. Code Ann. Section 58-23-10 et seq. (1976), as amended, and by R.103-100 through R.103-241 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 26 (1976), as amended (Supp. 2003), and R.38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 23A (1976), as amended (Supp. 2003), within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission. Failure to comply with these requirements within sixty (60) days shall result in the revocation of the authority granted herein.

3. Upon compliance with S.C. Code Ann. Section 58-23-10, et seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, a Certificate shall be issued to Big Five authorizing the motor carrier services granted herein.

4. Prior to compliance with the above-referenced requirements and receipt of a Certificate, the motor carrier services authorized herein shall not be provided.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice Chairman

(SEAL)